

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

BOBBY WAYNE HALEY, SR.,)	
an individual, <i>et al.</i> ,)	
)	
Plaintiff,)	
)	CASE NO. 10-CV-361-TDL-FHM
vs.)	
)	
THE CITY OF TULSA, <i>et al.</i> ,)	
)	
)	
Defendants.)	

DEFENDANT CITY OF TULSA’S MOTION TO ENFORCE SETTLEMENT

Defendant, City of Tulsa (City), by and through its attorneys, Clark O. Brewster, Guy A. Fortney, Mark B. Jennings and Gerald Bender, respectfully moves the Court to enforce the Settlement Agreement reached in the above styled case. The Defendant offers the following in support:

1. On January 10, 2014, the parties participated in a Settlement Conference before Magistrate Judge Kimberly West and negotiated a settlement releasing all claims against the City.

2. Typically, the process for the settlement and payment of litigation claims in municipal government is a matter of state and local law and City policy. The process is as follows:

- a. An attorney assigned to the case drafts a recommendation to the Mayor, attaching all pertinent documents to be used in resolution of the case;

- b. The recommendation must be reviewed and approved by the Litigation Division Manager;
 - c. The recommendation must be reviewed and approved by the City Attorney, David O'Meilia.
 - d. If approved, the recommendation and other necessary forms are sent to the Mayor.
 - e. The Office of the Mayor places the items received on the next available Mayor's agenda.
 - f. The Mayor may accept or reject the recommendation or send the recommendation back for additional information or documentation.
 - g. If the settlement is approved by the Mayor for payment by the City, another request for action is necessary to formally pay out the funds from the City's sinking fund. This action requires submittal of a Journal Entry.
 - h. Due to the amount of the settlement in this matter, City Council approval of the payment will also be necessary.
3. Mayor Dewey F. Bartlett Jr. approved the settlement on February 12, 2014.
4. On February 14, 2014, Jessica E. Rainey, Sr. Assistant City Attorney for the City of Tulsa, forwarded Plaintiff's Counsel a standard Journal Entry and Settlement Agreement, necessary for payment from the sinking fund. The City requested a signed copy of the forms be returned.
5. On February 17, 2014, Ms. Rainey informed Plaintiff's Counsel that there may be a potential child support lien which would need to be protected on the settlement check.

6. Ms. Rainey sent a request to the Oklahoma Department of Human Services (DHS) to confirm the lien on February 18, 2014.

7. On February 19, 2014, DHS confirmed Plaintiff's child support lien and communicated an intention to file the lien in Plaintiff's case.

8. On March 10, 2014, Ms. Rainey contacted Plaintiff's Counsel to inquire whether a DHS lien has been filed in the case.

9. On April 17, 2014, Ms. Rainey again requested DHS file their lien in the case. Notice of a lien was filed by DHS on April 18, 2014.

10. The Court entered an order on June 19, 2014, for the parties to file a Joint Status Report. Dkt No. 149. The revised settlement documents reflecting the DHS lien interest were sent to Plaintiff's Counsel the same day.

11. On July 1, 2014, Gerald M. Bender, Litigation Division Manager for the City of Tulsa, inquired by e-mail of Plaintiff's Counsel as to the status of the settlement documents. Plaintiff's Counsel responded that the Plaintiff and DHS were currently undergoing negotiations regarding the child support lien. Exhibit 1.

12. A Joint Status Report was filed with this Court July 8, 2014. Dkt. No. 150.

13. The City, through Mr. Bender, again requested an update on the Child Support lien from Plaintiff's counsel on July 21, 2014. Exhibit 2.

14. The City, yet again, on August 14, 2014, sought an update from Plaintiff's counsel on status of the Child Support Lien and inquired as to distribution of the funds on the settlement check. Plaintiff's Counsel requested the City hold off on efforts to finalize settlement paperwork due to his discussions with his client. Exhibit 3.

15. This Court entered an order on November 6, 2014, requiring the dismissal papers to be filed by December 5, 2014. Dkt. No. 151.

16. On November 7, 2014, Mr. Bender again advised Plaintiff's Counsel that a signed Journal Entry was necessary to begin the payment approval process. He further explained once the Journal Entry was received, the process would take four weeks. Exhibit 4.

17. Plaintiff's Counsel informed the City the Plaintiff would sign the documents, Friday, November 14, 2014. Exhibit 5.

18. The City did not receive signed documents. On November 20, 2014, the City again contacted Plaintiff's Counsel. Exhibit 6. Plaintiff's Counsel, on November 21, 2014, requested a second copy of all necessary documents. Plaintiff's Counsel conveyed an intention to spend the weekend attempting to locate his client. Exhibit 7.

19. Plaintiff's Counsel last communicated to the City that Plaintiff was eventually located and refused to sign the Settlement documents at a meeting with his attorney on December 1, 2014.

20. In addition to the efforts delineated above, Defendant's Counsel, Mr. Fortney, has on numerous occasions spoken with Plaintiff's Counsel by telephone in an attempt to obtain Plaintiff's signature. Plaintiff's Counsel informed the City he was "working on it."

The City is unable to complete its necessary settlement process and comply with state and local law and City policy until the Plaintiff signs the Settlement Agreement and a lien release is executed. Following receipt of the Court's November 6, 2014 Order, Counsel

for the City have made multiple attempts to obtain the Plaintiff's execution of the paperwork which the Plaintiff, to date, has refused to sign. The City respectfully requests this Court enter an Order to enforce the Settlement Agreement.

Respectfully submitted,

s/ Gerald M. Bender

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Attorneys for the Defendant City of Tulsa

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2014, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

J. Derek Ingle
E. Terrill Corley
E. Terrill Corley & Assoc
1809 E. 15th St.
Tulsa, OK 74104